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CALIFORNIANS TO DEFEND THE OPEN PRIMARY
and INDEPENDENT VOTER PROJECT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEACE AND FREEDOM PARTY OF
CALIFORNIA, *et al.*

Plaintiffs,

vs.

Dr. SHIRLEY N. WEBER, CALIFORNIA
SECRETARY OF STATE.

Defendant.

CALIFORNIANS TO DEFEND THE OPEN PRIMARY and INDEPENDENT VOTER PROJECT.

(Proposed) Intervenor-Defendants.

Case No. 4:24-cv-08308-MMC

**NOTICE OF MOTION AND
MOTION TO INTERVENE OF
CALIFORNIANS TO DEFEND THE
OPEN PRIMARY AND
INDEPENDENT VOTER PROJECT**

DATE: March 28, 2025

TIME: 9:00 a.m.

COURTROOM: 7 (19th Floor)

JUDGE: Hon. Maxine M. Chesney

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NOTICE OF MOTION & MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on Friday, March 28, 2025, at 9:00 a.m., or as soon thereafter as the parties may be heard, Intervenor-Defendants CALIFORNIANS TO DEFEND THE OPEN PRIMARY and INDEPENDENT VOTER PROJECT will move this Court, at the United States Courthouse located at 450 Golden Gate Avenue, San Francisco, California 94102, Courtroom #7 (19th Floor), for an order granting it leave to intervene as of right under [Federal Rule of Civil Procedure 24\(a\)](#), or, alternatively, for permissive intervention pursuant to [Federal Rule of Civil Procedure 24\(b\)](#).

This motion is based on the following documents: this Notice of Motion and the attached Points & Authorities; the Declaration of Christopher E. Skinnell, filed herewith; the Complaint in Intervention and Answer in Intervention, filed herewith; and all the other papers, documents, or exhibits on file or to be filed in this action, and the argument to be made at any hearing on the motion ordered by the Court.

Respectfully submitted,

Dated: January 31, 2025

NIELSEN MERKSAMER LLP

By: /s/ Christopher E. Skinnell
Christopher E. Skinnell

Attorneys for Intervenor-Defendants
CALIFORNIANS TO DEFEND THE
OPEN PRIMARY and INDEPENDENT
VOTER PROJECT

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 This is now the *seventh* lawsuit challenging Proposition 14, California's Top
 4 Two Candidate Open Primary Act. Proposed Intervenors herein, Californians to
 5 Defend the Open Primary ("CADOP") and the Independent Voter Project ("IVP"), have
 6 been permitted to intervene in all of the prior suits. In all but one of those cases—
 7 including three times in the federal district courts—intervention was granted over the
 8 objection of the plaintiffs. Perhaps most importantly, CADOP and IVP previously
 9 defended Proposition 14 in a prior challenge to the constitutionality of the Act by
 10 these same political parties, on the very same grounds presented by the Complaint
 11 herein. *See Rubin v. Padilla*, 233 Cal. App. 4th 1128 (1st Dist. 2015), *rev. denied*, [2015](#)
 12 [Cal. LEXIS 2395 \(Cal., Apr. 29, 2015\)](#), *cert. denied*, [577 U.S. 923 \(Oct. 13, 2015\)](#)
 13 (rejecting First Amendment and Equal Protection challenges to Proposition 14 by so-
 14 called "minor" parties based on based on alleged difficulty in advancing from the
 15 primary to the general election ballot).

16 And even though, as the measure's chief sponsors, there is no question CADOP
 17 and IVP are entitled to intervene in these proceedings as well, CADOP and IVP are
 18 forced, yet again, to seek leave of Court to intervene to defend the measure. Counsel
 19 for Defendant Secretary of State has informed Proposed Intervenors' counsel that the
 20 Secretary does not oppose this intervention, but Plaintiffs have refused to stipulate,
 21 necessitating this motion. *See* Skinnell Decl., filed herewith, ¶¶ 12-13 & Exhibit 1.

22 CADOP and IVP respectfully request an order from this Court granting their
 23 intervention as of right. That CADOP's and IVP's interests in the subject matter of
 24 this action, as the chief supporters of Proposition 14, are sufficient to justify
 25 intervention is well-established by controlling case law; no other defendant
 26 adequately represents CADOP's and IVP's interests; and denying intervention would
 27 seriously impair CADOP's and IVP's ability to protect their interests by risking
 28 inconsistent court rulings and invalidation of Proposition 14, thereby undermining

1 CADOP's and IVP's prior legal victories on the same exact issues. Finally, this motion
 2 is timely, coming as it does before Defendant Weber is due to file a responsive
 3 pleading, and while no proceedings are currently pending. There could not be a
 4 clearer case for intervention as of right.

5 Alternatively, CADOP and IVP should at least be granted permissive
 6 intervention. Either way, they should be allowed to participate in this suit.

7 **II. FACTUAL BACKGROUND.**¹

8 **A. ABOUT CALIFORNIANS TO DEFEND THE OPEN PRIMARY AND THE**
 9 **INDEPENDENT VOTER PROJECT.**

10 CADOP is a California nonprofit corporation formed to support the passage of
 11 Proposition 14 by California's voters in 2010. Its sole purpose was, and is, to educate
 12 the public about, and to advocate for open, nonpartisan primary elections in
 13 California, allowing voters to cross party lines in elections for the Legislature,
 14 statewide elected offices and congressional districts, and to defend Proposition 14 in
 15 litigation. As part of its mission (and to comply with California's Political Reform Act,
 16 see [Cal. Gov't Code § 81000 et seq.](#)), CADOP created and administered a political
 17 committee, Yes on 14—Californians For An Open Primary, that successfully
 18 advocated for the adoption of Proposition 14 by California voters in 2010, expending
 19 \$4.75 million in the process. Yes on 14 was *the* primarily-formed ballot measure
 20 committee in support of Proposition 14. *See* Skinnell Decl., ¶¶ 2-3.

21 CADOP has also been active in litigation to defend Proposition 14, as discussed
 22 further below, and legislative activities surrounding Proposition 14, to ensure that
 23 implementation of the measure is not frustrated by legislative tinkering. *See* Skinnell
 24 Decl., ¶ 4. CADOP's legislative activities include participation in the process leading

25
 26
 27 ¹ “[A] district court is required to accept as true the non-conclusory allegations
 28 made in support of an intervention motion.” [*Southwest Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 819 \(9th Cir. 2001\).*](#)

1 to the enactment of Assembly Bill 1413 (“AB 1413”),² technical clean-up legislation
 2 that amended a number of provisions of the Elections Code that implement
 3 Proposition 14. *Id.*

4 IVP is a nonprofit corporation, founded to represent and advocate for the full
 5 engagement of non-partisan voters in California’s electoral process. Proposition 14’s
 6 Top Two Open Primary system has been a major reform project of Intervenor IVP for
 7 several years on which it has expended considerable resources. It was directly
 8 involved in drafting and sponsoring—indeed, was the initial drafter—of the measure
 9 that became Proposition 14, and the SB6 legislation.³ It expended significant
 10 resources advocate for placement of the Top Two Open Primary before the voters. The
 11 Top Two Open Primary plan is a major accomplishment of IVP, and declaring it
 12 inoperative would severely harm IVP’s advocacy for and programs for DTS voters, and
 13 detract for IVP’s reputation as an effective advocate for DTS voters. *See Skinnell*
 14 Decl., ¶ 5.

15 Since Proposition 14 was enacted, CADOP and IVP have spent more than \$1
 16 million dollars to defend the measures in every level of the federal and state courts,
 17 up to and including petitions for review and certiorari in the California and United
 18 States Supreme Courts, respectively. *See Skinnell Decl.*, ¶¶ 6-11.

19 B. ABOUT PROPOSITION 14.

20 Proposition 14 is one of a series of reforms adopted by California voters in an
 21 effort to fix their dysfunctional government, which was plagued with extreme
 22 partisanship. Not surprisingly, virtually the entire political establishment—including
 23 the leadership of both parties in the Legislature—opposed Proposition 14. *See*
 24 Skinnell Decl., ¶¶ 3. Nevertheless, Californians voted on June 8, 2010, to adopt
 25

26 ² Assem. Bill 1413 (2011-2012 Reg. Sess.), codified at Cal. Stats. 2012, ch. 3.

27 ³ Senate Bill 6 (2009-2010 Reg. Sess.), codified at Cal. Stats. 2009, ch. 1 (“SB6”),
 28 was adopted by the Legislature as implementing legislation for Proposition 14, and its
 effectiveness was made contingent upon Proposition 14’s approve by the voters at the
 June 2010 primary.

1 Proposition 14. *Id.*

2 Proposition 14 amended the state Constitution to replace party primaries with
 3 a type of open primary election known as “top two,” or “voter-nominated” primary
 4 election. Only candidates and voters registered with a qualified political party could
 5 participate in the primary elections under the prior system; DTS voters and those
 6 affiliated with non-qualified parties were prohibited from participating in the primary
 7 elections.⁴

8 Under Proposition 14, any candidate, regardless of whether he or she is
 9 affiliated with a qualified party, may run in the primary for congressional or state
 10 elective office (now called “voter-nominated” offices). In addition, any voter may vote
 11 at the primary election for any candidate without regard to the political party
 12 preference of either the candidate or the voter. See CAL. CONST. art. II, § 5 (as
 13 amended by Proposition 14); Cal. Elec. Code § 8002.5(b) (as amended by SB 6).⁵ The
 14 two candidates receiving the highest vote totals for each office at the primary election,
 15 regardless of party preference, will then compete for the office at the ensuing general
 16 election. See CAL. CONST. art. II, § 5 (as amended by Proposition 14); Cal. Elec. Code
 17 §§ 8141.5 (added by SB 6) and 15452 (as amended by SB 6). This type of top-two
 18 primary system was upheld against facial constitutional challenge by the U.S.
 19 Supreme Court in Wash. State Grange v. Wash. Republican Party, 552 U.S. 442 (2008)
 20 (“*Grange I*”), and against an as-applied constitutional challenge in Wash. State
 21 Republican Party v. Wash. State Grange, 676 F.3d 784 (9th Cir.), cert. denied, 568

22
 23
 24 ⁴ Decline to State voters might be allowed to vote in a party’s primary under the
 25 former system, but only if the party deigned to permit it. See Cal. Elec. Code § 2151.
 26 Other, minor party voters could not participate at all.

27 ⁵ Elections Code § 359.5, added by SB 6, defines “Voter-nominated office” to
 28 include: (1) Governor; (2) Lieutenant Governor; (3) Secretary of State; (4) State
 Treasurer; (5) Controller; (6) State Insurance Commissioner; (7) Member of the Board
 of Equalization; (8) Attorney General; (9) State Senator; (10) Member of the Assembly;
 (11) United States Senator; (12) Member of the United States House of
 Representatives.

1 [U.S. 814 \(2012\)](#) (“*Grange II*”).

2 Like the Washington system, on which Proposition 14 was largely modeled,
 3 candidates for voter-nominated office have the option of indicating their party
 4 “preference” on the ballot, but no candidate becomes the “nominee” of any party by
 5 virtue of choosing that preference. [California Elections Code § 8002.5\(c\)](#) provides: “A
 6 candidate designating a party preference pursuant to subdivision (a) shall not be
 7 deemed to be the official nominee of the party designated as preferred by the
 8 candidate. A candidate’s designation of party preference shall not be construed as an
 9 endorsement of that candidate by the party designated. The party preference
 10 designated by the candidate is shown for the information of the voters only and may
 11 in no way limit the options available to voters.”

12 **C. ABOUT THE MANY AND VARIED PRIOR SUITS CHALLENGING
 13 PROPOSITION 14 IN WHICH CADOP AND IVP HAVE INTERVENED.**

14 Ever since Proposition 14 was placed on the ballot, it has been under constant
 15 legal attack in an effort to undermine it. *See Skinnell Decl.*, ¶¶ 6-12.

16 Prior to the election on Proposition 14 an opponent of the measure, with the
 17 consent of the leadership in the California Legislature, filed a lawsuit in the
 18 California courts seeking to amend the language for the ballot title and summary and
 19 the ballot label so that they tracked his ballot argument against Proposition 14. The
 20 changes proposed by the plaintiff would have converted the ballot title and summary
 21 and label into campaign advocacy against Proposition 14, increasing the expense and
 22 effort of CADOP and other supporters to campaign for its enactment. No notice was
 23 given to Proposition 14’s supporters, but they had the good fortune to learn of the
 24 action in an online posting. *See Skinnell Decl.*, ¶¶ 7-8.

25 By the time the Yes on 14 campaign (*i.e.*, CADOP) learned of the filing of *Clark*
 26 *v. Bowen*, the Legislature had already reached an agreement with plaintiff Clark that
 27 the Court could enter an order amending the title and summary and label in
 28 accordance with plaintiff’s wishes. CADOP requested that the plaintiff Clark and the

1 Legislature stipulate to the intervention of Yes on 14. They refused. CADOP therefore
 2 filed an *ex parte* application to intervene on behalf of Yes on 14, which was granted.
 3 Intervenors mounted a strong defense and successfully resisted the most egregious
 4 changes to the ballot title and summary and ballot label proposed by plaintiff and the
 5 Legislature in the Sacramento County Superior Court. That decision was upheld by
 6 the Third District Court of Appeal. *See id.* at ¶ 8; [*Clark v. Superior Court, 2010 Cal.*](#)
 7 [*App. Unpub. LEXIS 1911 \(Cal. Ct. App. 3d Dist. Mar. 16, 2010\)*](#). The same day, the
 8 Court of Appeal also overruled Mr. Clark’s efforts to rewrite the Legislative Analyst’s
 9 “Fiscal Effect” analysis for Proposition 14. *See Taylor v. Superior Court, 2010 Cal.*
 10 [*App. Unpub. LEXIS 1909 \(Cal. Ct. App. 3d Dist. Mar. 16, 2010\)*](#).

11 Once Proposition 14 passed, the litigation only increased. As noted above, there
 12 have been seven post-election lawsuits challenging Proposition 14 and its
 13 implementing statutes, and this is the second challenge by the Libertarian Party,
 14 Peace & Freedom Party, and Green Party based on their asserted right to access the
 15 general election ballot:

16 Within months of the Proposition’s passage, “Plaintiffs Jeff Mackler and
 17 Rodney Martin wish[ed] to run for the United States House of Representatives
 18 ‘stating a preference’ on the ballot for ‘Socialist Action’ and ‘the Reform Party,’
 19 respectively,” *id. at 352*, even though those parties were not qualified political parties
 20 in California. The suit also challenged the prohibition on write-in voting at the
 21 general election. The California Court of Appeal rejected the challenge in [*Field v.*](#)
 22 [*Bowen, 199 Cal. App. 4th 346 \(2011\)*](#). CADOP and IVP were granted intervention of
 23 right in *Field* (*see 199 Cal. App. 4th at 352*),⁶ despite the objection of the plaintiffs.

24 In early 2011, a candidate for a special election for congressional office filed
 25
 26

27 ⁶ CADOP was granted intervention under the name “Yes on 14 – Californians for
 28 an Open Primary,” the ballot measure campaign committee created and maintained
 by CADOP as the only committee primarily formed and operated to support
 Proposition 14 at the ballot box.

1 suit in the Central District of California, seeking declaratory and injunctive relief
 2 based upon the alleged unconstitutionality of the party label statutes that precluded
 3 him from stating his affiliation with the “Coffee Party,” or alternatively identifying
 4 himself as “Independent,” rather than as having “No Party Preference.” The district
 5 court granted summary judgment in favor of the defendants (including Intervenors
 6 CADOP and IVP), and the Ninth Circuit affirmed in *Chamness v. Bowen*, 722 F.3d
 7 1110 (9th Cir. 2013). CADOP and IVP were granted intervention of right in *Chamness*
 8 as well, again over the objection of the plaintiffs. See 722 F.3d at 1121 n.6.

9 In mid-2011, the Libertarian Party of California (a plaintiff herein), the Peace
 10 & Freedom Party of California (also a plaintiff herein), the Green Party of Alameda
 11 County (a geographical division of the Green Party of California, a plaintiff herein),
 12 and a number of candidates and voters affiliated with those parties filed suit in the
 13 Alameda County Superior Court asserting a right to access the general election
 14 ballot—essentially the claim advanced in this case. The California Court of Appeal
 15 rejected that position in *Rubin*, and the California Supreme Court and United States
 16 Supreme Court declined to hear the case. In that case, the plaintiffs wisely stipulated
 17 to intervention by CADOP and IVP.

18 In 2012, in *Brown v. Bowen*, Case No. 2:12-cv-05547-PA-SP (C.D. Cal.), a
 19 number of voters filed suit in the Central District of California, challenging
 20 Proposition 14 under the federal Voting Rights Act. The district court again granted
 21 intervention to CADOP and IVP over the plaintiffs’ objection. See *Brown v. Bowen*,
 22 Case No. 2:12-cv-05547-PA-SP (C.D. Cal.) (Dkt. #14) (July 11, 2012 order granting
 23 intervention and denying preliminary injunction), p. 3 (“This Court similarly agrees
 24 that Interveners satisfy the requirements for intervention pursuant to Federal Rule of
 25 Civil Procedure 24(a)(2).”).

26 And in 2015, another voter filed suit in the Central District of California, again
 27 challenging the ballot label provisions of the Proposition 14 his inability to be labeled
 28 on the ballot as an “independent.” Yet again, the plaintiffs opposed intervention by

1 CADOP and IVP, and yet again the district court granted their motion to intervene.
 2 See *Soltysik v. Padilla*, No. CV 15-07916-AB (GJSx), 2015 U.S. Dist. LEXIS 195316
 3 (C.D. Cal. Dec. 11, 2015).

4 In short, CADOP and IVP have been allowed to intervene to defend Proposition
 5 14 time and time again. They should be permitted to do so in this case as well.

6 **III. CALIFORNIANS TO DEFEND THE OPEN PRIMARY AND THE**
 7 **INDEPENDENT VOTER PROJECT MEET THE STANDARD FOR**
 8 **INTERVENTION OF RIGHT UNDER FRCP 24(A), AND HAVE**
 9 **REPEATEDLY BEEN GRANTED INTERVENTION TO DEFEND**
PROPOSITION 14.

10 Ninth Circuit case law requires “an applicant for intervention as of right to
 11 demonstrate that ‘(1) it has a significant protectable interest relating to the property
 12 or transaction that is the subject of the action; (2) the disposition of the action may, as
 13 a practical matter, impair or impede the applicant’s ability to protect its interest; (3)
 14 the application is timely; and (4) the existing parties may not adequately represent
 15 the applicant’s interest.’” *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th
 16 Cir. 2004) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir.
 17 2002)). “Rule 24 traditionally receives liberal construction in favor of applicants for
 18 intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003).

19 Proposed Intervenors easily meet these criteria. Indeed, the federal courts have
 20 already granted CADOP and IVP intervention of right in three prior actions
 21 challenging Proposition 14 and its implementing legislation—*Chamness v. Bowen*,
 22 *Brown v. Bowen*, and *Soltysik v. Padilla*—over the objections of the plaintiffs.

23 **A. AS THE DRAFTERS AND CHIEF SUPPORTERS OF PROPOSITION 14 IN THE**
 24 **CAMPAIGN, AND AS LITIGANTS WHO HAVE PREVIOUSLY DEFENDED**
 25 **PROPOSITION 14’S CONSTITUTIONALITY AGAINST THESE SAME**
 26 **PLAINTIFFS, CADOP AND IVP HAVE SIGNIFICANT PROTECTABLE**
INTERESTS IN DEFENDING THE MEASURE AGAINST LEGAL CHALLENGE.

27 As discussed above, CADOP spent nearly \$5 million in support of Proposition
 28 14 at the June 2010 election, and it has spent well in excess of \$1 million in post-

1 enactment litigation. It has also been active, where appropriate, in negotiating
 2 legislative amendments to SB 6, including AB 1413 in 2012, to ensure that those
 3 amendments do not undermine (inadvertently or otherwise) Proposition 14.⁷ IVP has
 4 also expended considerable resources drafting the measure, qualifying it for the
 5 ballot, and defending it in litigation.

6 The Ninth Circuit has unequivocally held that “for purposes of intervention as
 7 of right, a public interest group that has supported a measure (such as an initiative)
 8 has a significant protectable interest in defending the legality of the measure.” *Prete*
 9 *v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (citing *Sagebrush Rebellion v. Watt*,
 10 713 F.2d 525, 528 (9th Cir. 1983)). Thus, ballot measure proponents or sponsors, and
 11 legislative sponsors, are routinely permitted to intervene in federal court actions to
 12 defend the legality of the measure they supported. See, e.g., *Wash. State Bldg. Constr.*
 13 *Trades v. Spellman*, 684 F.2d 627, 629-30 (9th Cir. 1982), cert. denied sub. nom., *Don’t*
 14 *Waste Wash. Legal Defense Found. v. Wash.*, 461 U.S. 913 (1983) (“Denial of DWW’s
 15 motion to intervene was error and accordingly we reverse as to that holding. ... DWW,
 16 as the public interest group that sponsored the initiative, was entitled to intervention
 17 as a matter of right under Rule 24(a).”); *Bates v. Jones*, 904 F. Supp. 1080, 1087 (N.D.
 18 Cal. 1995) (granting intervention to proponents of Proposition 140, California’s term
 19 limits initiative); *Vivid Entm’t, LLC v. Fielding*, 2013 U.S. Dist. LEXIS 109251 (C.D.
 20 Cal. Aug. 2, 2013) (granting intervention to proponents of Proposition 140, California’s term
 21 limits initiative Los Angeles County’s Measure B, regulating adult
 22 films); *Wash. State Republican Party v. Logan*, 377 F. Supp. 2d 907 (W.D. Wash.
 23 2005) (public interest group that supported Washington’s top-two measure allowed to
 24 intervene to defend that measure).

25
 26
 27 ⁷ See Assem. Comm. on Elec. & Redistricting, Conc. in Senate Amendments to AB
 28 1413 (Jan. 26, 2012), p. 7, available online at
http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201120120AB1413# (last visited Jan. 28, 2025) (identifying CADOP as a supporter of the bill).

1 **B. THE DISPOSITION OF THIS ACTION “MAY, AS A PRACTICAL MATTER,
2 IMPAIR OR IMPEDE [PROPOSED INTERVENORS’] ABILITY TO PROTECT
3 [THEIR] INTEREST[S].”**

4 Once a proposed intervenor establishes a significantly protectable interest,
5 courts approach the “impair or impede” requirement pragmatically: “[i]f an absentee
6 would be substantially affected in a practical sense by the determination made in an
7 action, he should, as a general rule, be entitled to intervene.” *Southwest Center for
8 Biological Diversity, 268 F.2d at 822* (quoting Rule 24 advisory committee’s notes).
9 There is no requirement that the proposed intervenor show “an absolute certainty”
10 that its interests will be impaired in support of its request. *Citizens for Balanced Use
11 v. Montana Wilderness Ass’n, 647 F.3d 893, 900 (9th Cir. 2011)*. “Generally, after
12 determining a party has a protectable interest, courts have ‘little difficulty concluding’
13 the disposition of the case may affect the interest.” *Missouri v. Harris, 2014 U.S. Dist.
14 LEXIS 76305, *20-*22 (E.D. Cal. June 3, 2014)* (quoting *State ex rel. Lockyer v. United
15 States, 450 F.3d 436, 442 (9th Cir. 2006)*). See also *Prete, 438 F.3d at 954-55* (“an
16 adverse court decision on such a [ballot] measure [supported by the proposed
17 intervenor] may, as a practical matter, impair the interest held by the public interest
18 group.”).

19 An adverse ruling in this action would leave CADOP and IVP with no means of
20 protecting their interests in the validity of Proposition 14 as established by their prior
21 litigation efforts. Presumably, that adverse ruling would be binding on the State in all
22 future actions, meaning CADOP and IVP would have no way of seeing that
23 Proposition 14 is enforced.

24 Moreover, CADOP and IVP have successfully litigated a prior case—Rubin—
25 raising *identical issues* to those advanced in Plaintiffs’ complaint, and obtained a
26 judgment in their favor, and against the political parties who are plaintiffs herein.
27 “[B]ecause of the possibility of inconsistent rulings, disposition of this action without
28 intervention may impair or impede Intervenor-[Defendant]s’ ability to protect that

1 interest.” *Widjaja v. Yum! Brands, Inc.*, 2009 U.S. Dist. LEXIS 98391, *19 (E.D. Cal.
 2 Oct. 22, 2009) (Wanger, J.). Notwithstanding CADOP’s and IVP’s success in
 3 preserving the enforcement of Proposition 14 in multiple proceedings, if this Court
 4 were to issue an injunction precluding Defendant Secretary of State from enforcing
 5 Proposition 14, CADOP’s and IVP’s victories to date, on which they have spent
 6 considerable time and resources, would be nullified.

7 **C. THIS MOTION IS TIMELY.**

8 In determining whether a motion is “timely,” a court generally evaluates three
 9 factors: (1) the stage of the proceedings, (2) prejudice to existing parties, and (3) the
 10 length of, and reason for, any delay in seeking to intervene. *California Dep’t of Toxic*
 11 *Substances Control v. Commercial Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir.
 12 2002). Courts assess these criteria, and the issue of timeliness, especially “leniently”
 13 when intervention is sought of right, because of the “likelihood” of “serious harm.”
 14 *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984) (overturning denial of State
 15 of Idaho’s motion to intervene as untimely).

16 **1. Stage of the proceedings: no significant proceedings have
 17 yet taken place in this action.**

18 This case was apparently filed on November 21, 2024. CADOP and IVP were
 19 not served with the complaint, or otherwise notified by Plaintiffs’ counsel, even as a
 20 courtesy, despite the fact that they CADOP, IVP, and the political parties who are
 21 plaintiffs in this case were parties to the *Rubin* case as well, and despite Plaintiffs’
 22 clear recognition of the overlap of issues, as evidenced by footnote 1 of the Complaint.
 23 See Skinnell Decl., ¶ 12. Counsel also did not receive notice from the Secretary of
 24 State’s counsel, but none of the counsel of record participated in *Rubin*, and the
 25 current Secretary of State is two office-holders removed from the one who initially
 26 agreed to intervention in that case. *Id.*

27 Upon learning of the case, Proposed Intervenors’ counsel contacted their clients
 28 and then contacted counsel for Plaintiffs and for Defendant Secretary of State Weber,

1 on January 22, 2025, to request a stipulation to intervention. *Id.* On January 23,
 2 counsel for Plaintiffs indicated that they would not stipulate to intervention,
 3 and Intervenors' counsel immediately began preparing motion papers. Counsel for
 4 Defendant responded on January 27, 2025, indicating that the Secretary of State does
 5 not oppose CADOP's and IVP's intervention. *Id.* at ¶ 13 & Ex. 1. On January 29, 2025,
 6 counsel for proposed Intervenors met-and-conferred with counsel for the parties by
 7 videoconference and by e-mail to coordinate the timing of this motion in a manner
 8 that is most convenient to all the parties. *Id.* This motion is filed within
 9 approximately a week of receiving the response of Plaintiff's counsel and within five
 10 days of receiving the Secretary of State's response.

11 The Secretary's response to the complaint is not due until this Friday—
 12 January 31—because the parties previously stipulated to an extension of time. *See*
 13 ECF No. 11. Thus, this action is not yet at issue, the Court has not “substantively—
 14 and substantially—engaged the issues in this case,” *Smith v. Marsh*, 194 F.3d 1045,
 15 1050 (9th Cir. 1999), and intervention is therefore timely. *See Sierra Club v. United*
 16 *States EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993) (upholding trial court’s finding that
 17 application was timely where filed before defendant had filed its answer), *overruled in*
 18 *part on other grounds by Wilderness Soc'y v. United States Forest Serv.*, 630 F.3d 1173
 19 (9th Cir. 2011); *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir.
 20 1996) (“ONRC’s motion to intervene was timely. ONRC moved to intervene ... before
 21 the Secretaries had filed an answer, and before any proceedings had taken place.
 22 Moreover, ONRC’s motion to intervene does not appear to have prejudiced either
 23 party in the lawsuit, since the motion was filed before the district court had made any
 24 substantive rulings.”).

25 **2. Intervention will not prejudice the existing parties.**

26 In addressing this criterion, the relevant question “is whether existing parties
 27 may be prejudiced by the delay in moving to intervene, not whether the intervention
 28 itself will cause the nature, duration, or disposition of the lawsuit to change.” *United*

1 *States v. Union Elec. Co.*, 64 F.3d 1152, 1159 (8th Cir. 1995). See also *United States ex*
 2 *rel. McGough v. Covington Technologies Co.*, 967 F.2d 1391, 1395 (9th Cir. 1992)
 3 (“Industrial Indemnity’s position following intervention is essentially the same as it
 4 would have been had the government intervened earlier.”).

5 In this case, no party will be prejudiced by the proposed intervention.
 6 Defendant Weber does not oppose the proposed intervention. Plaintiffs do, but their
 7 interests will not be prejudiced by intervention now. This case is barely two months
 8 old, and the Secretary of State’s response to the complaint—anticipated to be a motion
 9 to dismiss—will not be heard for more than a month yet. Proposed Intervenors have
 10 submitted a proposed answer to the complaint with this motion, and they are
 11 concurrently filing a request that the Court allow them to provisionally move to
 12 dismiss as well, so that their motion can be heard concurrently with Defendant’s. No
 13 other proceedings are presently pending that could be delayed.

14 **3. Length of delay and reason for delay: CADOP and IVP have**
 15 **moved expeditiously to intervene in this action.**

16 In addressing the third prong of timeliness—length and reason for delay—the
 17 courts consider the length and reason for delay from the time the movant “knows or
 18 has reason to know that his interests might be adversely affected by the outcome of
 19 the litigation.” *Cal. Dep’t of Toxic Substances Control*, 309 F.3d at 1120 (quoting
 20 *United States v. State of Oregon*, 913 F.2d 576, 589 (9th Cir. 1990)).

21 Upon learning of the existence of this action, Proposed Intervenors moved
 22 expeditiously to seek intervention, first attempting to seek intervention on a
 23 cooperative basis, and then filing this motion barely a week after learning that
 24 Plaintiffs would not stipulate to intervention.

25 The reason for this minor delay is simple: counsel for CADOP and IVP had to
 26 prepare the complaint, research several procedural issues, consult with their clients,
 27 confer with counsel for the other parties to seek their views on the proposed
 28 intervention, prepare a proposed complaint- and answer-in-intervention, prepare a

provisional motion dismiss, and then research and draft the instant papers. See Skinnell Decl., ¶¶ 12-14. *See also Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (affirming intervention when motion filed four months after complaint filed, before any substantive rulings, because the “motion was filed at a very early stage”); *Est. of Monk v. Alameda Cty.*, No. 22-cv-04037-TSH, 2023 U.S. Dist. LEXIS 17164, at *8 (N.D. Cal. Feb. 1, 2023) (same when motion filed six months after amended complaint filed, and four months after answers filed).

D. THE EXISTING PARTIES DO NOT ADEQUATELY REPRESENT THE PROPOSED INTERVENORS’ INTERESTS.

“In assessing whether a present party will adequately represent an intervenor applicant’s interests, [courts must] ‘consider several factors, including whether [a present party] will undoubtedly make all of the intervenor’s arguments, whether [a present party] is capable of and willing to make such arguments, and whether the intervenor offers a necessary element to the proceedings that would be neglected.’ [Citation.] *The burden of showing inadequacy of representation is minimal and ‘is satisfied if the applicant shows that representation of its interests ‘may be’ inadequate....’*” *Prete*, 438 F.3d at 956 (quoting *Sagebrush Rebellion, Inc.*, 713 F.2d at 528 (emphasis added)); *see also Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972) (“The requirement of the Rule is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.”).

No party will adequately represent CADOP’s and IVP’s interests here.

Plaintiffs obviously will not.

As for the Secretary of State, there is no reason to presume that the Secretary “will undoubtedly make all of the intervenor’s arguments.” Though CADOP and IVP and the Secretary have all defended the measure in the past, they have routinely presented different arguments in support of the measure, and there has been a history of *actual* disagreement about those arguments. *See* Skinnell Decl., ¶¶ 18-22.

1 For example, in both *Field* and *Chamness*, CADOP and IVP and the Secretary
 2 disagreed about the proper interpretation of [Elections Code §§ 8002.5](#) and [13105](#), see,
 3 e.g., [Field](#), [199 Cal. App. 4th at 370](#), and they disagreed about the proper
 4 interpretation of other provisions regarding write-in voting, though those provisions
 5 are not at issue here. [Id. at 354-55](#) (accepting CADOP's and IVP's interpretation and
 6 rejecting Secretary's).

7 In *Field*, Intervenors alone argued that the case could be resolved as a matter
 8 of law in an appeal from denial of a preliminary injunction, rather than remanding for
 9 further proceedings—a proposition the Court of Appeal accepted. See [id. at 352-53](#);
 10 Skinnell Decl., ¶ 20.

11 In *Chamness*, Intervenors alone argued that *Pullman* abstention was
 12 appropriate in light of the pendency of *Field*. See *Chamness v. Bowen*, Case No. 2:11-
 13 cv-01479-ODW-FFM (C.D. Cal.) (Dkt. #80) (Mar. 30, 2011 order denying motion for
 14 preliminary injunction), pp. 6-8; Skinnell Decl., ¶ 20.

15 And in *Rubin*, it was Intervenors who submitted substantial evidence upon
 16 which the Court of Appeal relied in concluding that Proposition 14 top-two primary
 17 system serves valuable interests. See [233 Cal. App. 4th at 1150-51](#). Intervenors were
 18 also the only parties in *Rubin* to file an opposition to the petition for certiorari. See
 19 U.S. Supreme Court Docket, [No. 15-135](#).

20 Moreover, the courts have recognized that:

21 [A]n official sponsor of a ballot initiative may be considered to add an element
 22 not covered by the government in defending the validity of the initiative in that
 23 ***the very act of resorting to a ballot initiative indicates a rift between
 the initiative's proponents and voters and their elected officials on the
 issue that underlies the initiative.*** [Citation.]

24
 25 [Bates](#), [904 F. Supp. at 1087](#) (emphasis added) (granting intervention to initiative
 26 proponents and rejecting plaintiffs' argument that intervention was unnecessary
 27 because the interest of intervenors would be adequately represented by Defendant
 28 Secretary of State, who "will vigorously defend the validity of the California

1 constitutional provision.”).

2 In the same vein, the California Supreme Court has held in *Perry v. Brown*, 52
 3 Cal. 4th 1116 (2011):

4 **Allowing official proponents to assert the state’s interest in the**
5 validity of the initiative measure in such litigation (along with any public
6 officials who may also be defending the measure) (1) assures voters who
7 supported the measure and enacted it into law that any residual
8 hostility or indifference of current public officials to the substance of
9 the initiative measure will not prevent a full and robust defense of the
10 measure to be mounted in court on the people’s behalf, and (2) ensures a
11 court faced with the responsibility of reviewing and resolving a legal challenge
12 to an initiative measure that it is aware of and addresses the full range of legal
13 arguments that reasonably may be proffered in the measure’s defense. In this
14 manner, the official proponents’ general ability to appear and defend the state’s
15 interest in the validity of the initiative measure and to appeal a lower court
16 judgment invalidating the measure serves to enhance both the fairness of the
17 judicial process and the appearance of fairness of that process.

18 *Id.* at 1125-26 (emphasis added). This discussion addresses “whether the intervenor
 19 offers a necessary element to the proceedings that would be neglected” and supports
 20 intervention here.

21 The courts have also recognized that the case for intervention by an initiative’s
 22 sponsor is particularly strong where, as here, the subject of the ballot measure is
 23 electoral reform. Thus, the *Bates* court granted intervention to the proponents of
 24 California’s term limits law, concluding that the mere fact of an initiative
 25 demonstrates a “rift” between the people and elected officials, and “[t]his is
 26 particularly so in the instant case, where the subject matter of the initiative was
 27 outwardly hostile to elected officials.” *Bates*, 904 F. Supp. at 1087. Likewise here,
 28 Proposition 14 was a reform measure that was widely opposed by the political
 establishment in Sacramento, including both major political parties. See Skinnell
 Decl., ¶ 3.

29 Simply put, the well-established hostility of the California political class to
 30 Proposition 14, combined with a history of the State and CADOP/IVP actually
 31 presenting different arguments in prior litigation, undermine the assumption that

1 CADOP's and IVP's interests will be adequately represented by the State. *See also*
 2 *Sagebrush Rebellion, Inc.*, 713 F.2d at 528-29 (“thus far in this litigation, the
 3 government, through the United States Attorney, has continued professionally and
 4 diligently to defend the actions of Secretary Andrus; there is no indication in this
 5 record of collusion or of any other conduct detrimental to the applicant’s interest.
 6 Nevertheless, such a showing is not required.”).

7 **IV. ALTERNATIVELY, CALIFORNIANS TO DEFEND THE OPEN**
PRIMARY AND THE INDEPENDENT VOTER PROJECT SHOULD BE
GRANTED PERMISSIVE INTERVENTION UNDER FRCP 24(b).

8 When intervention as a matter of right is denied, courts consider whether
 9 permissive intervention is appropriate under [Rule 24\(b\)\(1\)\(B\)](#). *Spangler v. Pasadena*
 10 *City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977). If intervention of right is denied,
 11 permissive intervention would nevertheless be appropriate here.

12 A court has broad discretion to allow intervention under Rule 24(b) when: (1) a
 13 federal statute confers a conditional right to intervene; or (2) the applicant’s claim or
 14 defense shares a common question of law or fact with the main action. [Fed. R. Civ.](#)
 15 [Proc. 24\(b\)\(1\)](#). “This provision plainly dispenses with any requirement that the
 16 intervenor shall have a direct personal or pecuniary interest in the subject of the
 17 litigation.” *SEC v. United States Realty & Improvement Co.*, 310 U.S. 434, 459 (1940).
 18 “Generally, permissive intervention under Rule 24(b) requires ‘(1) an independent
 19 ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact
 20 between the movant’s claim or defense and the main action.’” *Blum v. Merrill Lynch*
 21 *Pierce Fenner & Smith Inc.*, 712 F.3d 1349, 1353 (9th Cir. 2013). Additionally, “[i]n
 22 exercising its discretion, the Court must consider whether the intervention will
 23 unduly delay or prejudice the adjudication of the original parties’ rights.” [Fed. R. Civ.](#)
 24 [Proc. 24\(b\)\(3\)](#).

25 CADOP and IVP meet these criteria.

26 First, in federal question cases, like this one, the “independent ground for
 27 jurisdiction” requirement does not apply where the proposed intervenor is not raising

1 new claims. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th
 2 Cir. 2011).

3 Second, the timeliness of this motion is established above.

4 Third, there are undeniably common questions of law and fact related to the
 5 constitutionality of the party label provisions applicable to elections under the Top
 6 Two system, “as the common questions directly respond to the allegations raised by
 7 the” Plaintiffs. *Am. Hotel & Lodging Assn. v. City of Los Angeles*, Case No. 2:14-cv-
 8 09603-AB-SS (C.D. Cal.) (Dkt. #75) (order granting permissive intervention), p. 17.
 9 Indeed, given the present posture of the case, it appears that CADOP’s and IVP’s
 10 “defenses” will consist primarily of responding to questions of law and fact raised by
 11 the Complaint itself or to issues expected to be raised by Defendant’s motion to
 12 dismiss. *See Skinnell Decl.*, ¶ 15.

13 And finally, allowing CADOP and IVP to intervene would not “unduly delay or
 14 prejudice the adjudication of the original parties’ rights.” *Fed. R. Civ. Proc. 24(b)(3)*.
 15 As discussed above, CADOP and IVP do not propose to delay the conduct of this action
 16 at all, but seeks expeditious resolution of this case. *See Kootenai Tribe of Idaho v.*
 17 *Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002) (affirming intervention under FRCP
 18 24(b), though denying it under FRCP 24(a)(2), and noting “because the intervention
 19 motions were filed near the case outset and the defendant-intervenors said they could
 20 abide the court’s briefing and procedural scheduling orders, there was no issue
 21 whatsoever of undue delay.”).⁸

22 CADOP and IVP would also note that allowing them to intervene is likely to
 23 provide useful assistance to the Court by participating in this action.⁹ CADOP’s and

24
 25 ⁸ *Kootenai Tribe* was subsequently overruled by *Wilderness Soc’y v. United States Forest Serv.*, 630 F.3d 1173, 1178-79 (9th Cir. 2011), but only insofar as it denied intervention of right.

26
 27 ⁹ See *Spangler*, 552 F.2d at 1329 (in considering permissive intervention, courts
 28 may consider “whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.”); *Missouri v. Harris*, 2014

1 IVP's attorneys—alone among the counsel in this action—have been involved in every
 2 single lawsuit challenging Proposition 14, and they were involved in the initial
 3 drafting of the measure and subsequent amendments thereto as well. *See Skinnell*
 4 Decl., ¶¶ 2-6, 22. They, accordingly, have background knowledge about Proposition 14
 5 and its implementing statutes that no other participant in this action has.

6 Moreover, CADOP's and IVP's prior briefing has already been cited by the
 7 courts as providing significant, unique assistance on the questions related to the
 8 constitutionality of Proposition 14. *See Field, 199 Cal. App. 4th at 359* (“Plaintiffs
 9 argue that *Libertarian Party* cannot be applied here because the case was based on a
 10 qualified party system that Proposition 14 and Senate Bill 6 “dismantled” by doing
 11 away with partisan primaries. *This contention is persuasively refuted in interveners’*
 12 *appellate brief*, which identifies many rights that continue to be reserved for qualified
 13 parties under the Proposition 14 and Senate Bill 6 open primary system.” (emphasis
 14 added)); *Rubin, 233 Cal. App. 4th at 1150-51* (relying on evidence submitted by
 15 Intervenors regarding the purposes of the measure).

16 Finally, Rule 24 should not be applied in a way that encourages forum-
 17 shopping. *See Amoco Oil Co. v. Dingwell, 690 F. Supp. 78, 83 (D. Me. 1988)* (Rule 24
 18 not “intended to further the interests of forum shopping or to serve as a means to
 19 circumvent unfavorable state law.”); *cf. Freedom from Religion Fdn., 644 F.3d at 843*
 20 (requirement of independent jurisdictional ground for permissive intervention in non-
 21 federal question cases based on concern about expanding federal jurisdiction).

22
 23 [U.S. Dist. LEXIS 76305, at *20-*22 \(E.D. Cal. June 2, 2014\)](#) (granting permissive
 24 intervention to public interest group to defend legislation it supported, where
 25 intervenor “will bring a unique perspective to this action that will enable the court to
 26 make a well informed decision regarding the claims at issue.”); [Doe v. Harris, 2013](#)
 27 [U.S. Dist. LEXIS 4215, *7 \(N.D. Cal. Jan. 10, 2013\)](#) (granting permissive intervention
 28 to ballot measure proponent because “the Court anticipates that the presence of
 Proponents in this suit will contribute to the just and equitable resolution of the
 issues before it. ... [and] ... The Court finds that the potential for Proponents to make
 such contributions outweighs the as yet abstract danger that delay or prejudice to the
 original parties could result from Proponents’ formal participation as intervenors.”).

1 Denying CADOP and IVP leave to intervene would have that very effect. If this case
2 were brought in the California state courts, it would almost certainly be an abuse of
3 discretion to deny intervention. *See Perry, 52 Cal. 4th at 1126; Building Industry*
4 *Assn. v. City of Camarillo, 41 Cal. 3d 810, 822 (1986)*. This Court should not
5 encourage plaintiffs to file in federal court for the sole purpose of avoiding a vigorous
6 defense of Proposition 14 by its chief sponsors and defenders.

7 **V. CONCLUSION.**

8 In light of the foregoing, intervention of right—or alternatively by permission—
9 should be granted.

Respectfully submitted,

10 Dated: January 31, 2025

NIELSEN MERKSAMER LLP

11 By: /s/ Christopher E. Skinnell
12 Christopher E. Skinnell

13 *Attorneys for Intervenor-Defendants*
14 CALIFORNIANS TO DEFEND THE
OPEN PRIMARY and INDEPENDENT
VOTER PROJECT

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